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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 140703553-5999-02]

RIN 0648-BE29

**Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan;
Trawl Rationalization Program; Midwater Trawl Requirements**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule clarifies the regulatory requirements for vessels using midwater trawl gear in the Pacific Coast Groundfish Fishery Shorebased Individual Fishing Quota Program. This action is needed to eliminate inconsistencies and reduce confusion in the current regulations. For vessels targeting Pacific whiting, the action clarifies that the retention of prohibited and protected species is allowed until landing. The disposition of prohibited and protected species is specified consistent with the Pacific Coast Groundfish Fishery Management Plan (groundfish FMP), the Pacific Coast Salmon Fishery Management Plan (salmon FMP), and other applicable law.

DATES: Effective [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: NMFS prepared a Final Regulatory Flexibility Analysis (FRFA),

which is summarized in the Classification section of this final rule. NMFS also prepared an Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule (Published in the Federal Register on August 27, 2015; 80 FR 52015). Copies of the IRFA, FRFA and the Small Entity Compliance Guide are available from William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or by phone at 206–526–6150. Copies of the Small Entity Compliance Guide are available on the West Coast Region’s Web site at www.westcoast.fisheries.noaa.gov/.

FOR FURTHER INFORMATION CONTACT: Becky Renko, 206-526-6110; (fax) 206-526-6736; becky.renko@noaa.gov.

SUPPLEMENTARY INFORMATION: This action amends the Pacific Coast groundfish fishery regulations to eliminate redundancies and inconsistencies relating to the use of midwater trawl gear in the Shorebased Individual Fishing Quota Program (Shorebased IFQ Program). The action is consistent with policy decisions that the Pacific Fishery Management Council (Council) made during the implementation of a trawl catch share program under Amendment 20 to the groundfish FMP.

Midwater trawl gear has primarily been used to target Pacific whiting, but can also be used to target other groundfish species. Since implementation of the Shorebased IFQ Program in 2011, midwater trawl gear has been increasingly used to target non-whiting groundfish north of 40°10’ north latitude. South of 40°10’ north latitude midwater trawling has been allowed year round in waters deeper than 150 fathoms (fm) for all target species.

In anticipation of the trawl catch share program, groundfish regulations were restructured on October 1, 2010 (75 FR 60868). When the Shorebased IFQ Program was implemented, the midwater Pacific whiting shorebased fishery and the bottom trawl fishery were merged to create

a single Shorebased IFQ fishery. Many of the pre-IFQ fishery management measures relating to time and area management were retained in the regulations for use in the Shorebased IFQ Program. However, integrating pre-IFQ regulations with new regulations for the Shorebased IFQ Program resulted in inconsistencies and numerous unclear and confusing management restrictions relating to the use of midwater trawl gear.

This final rule revises groundfish regulations to clarify that midwater trawl gear is required for vessels targeting Pacific whiting during the primary season north of 40°10' north latitude, and that midwater trawl gear is allowed for vessels targeting non-whiting species during the Pacific whiting Shorebased IFQ Program primary season. Restrictions that allow midwater trawl to only be used by vessels participating in the Pacific whiting Shorebased IFQ fishery are removed. The regulations are revised to clarify that vessels using midwater trawl gear, regardless of the target species, are exempt from the trawl Rockfish Conservation Area (RCA) restrictions in the area north of 40°10' north latitude during the dates of the Pacific whiting primary season. These changes allow vessels using midwater trawl gear north of 40°10' north latitude to declare either “limited entry midwater trawl, non-whiting shorebased IFQ” or “limited entry midwater trawl, Pacific whiting shorebased IFQ” consistent with the target strategy. This action is expected to add clarity to the regulations.

This action also revises the definition of “Pacific whiting IFQ trip” consistent with Appendix E of the groundfish FMP, which details the Final Preferred Alternative adopted under Amendment 20, and which is consistent with the Environmental Impact Statement analysis conducted in support of Amendment 20. Appendix E defines non-whiting landings as those with less than 50 percent Pacific whiting by weight.

Groundfish management includes restrictions on the retention of certain non-groundfish species, including prohibited and protected species. Prohibited species include all salmonids, Pacific halibut, and Dungeness crab off Oregon and Washington. Protected species include marine mammals, seabirds, sea turtles, and species such as green sturgeon and eulachon, which are listed under the Endangered Species Act (ESA). Generally, prohibited species must be returned to the sea as soon as practicable with a minimum of injury. An exception to the retention restrictions is made for tagged fish, or when retention is authorized by other applicable law. Pacific halibut may be retained until landing by vessels in the Pacific whiting fishery that do not sort the catch at sea only pursuant to NMFS donation regulations. Amendment 10 to the groundfish FMP and Amendment 12 to the salmon FMP were revised to allow salmon bycatch to be retained until landing in cases where the Council determines it is beneficial to the management of the groundfish and salmon resources. Under a program approved by the Council and NMFS, salmon remain a prohibited species; and, at a minimum, the requirements must allow for accurate monitoring of the retained salmon and must not provide incentives for fishers to increase salmon bycatch or allow salmon to reach commercial markets.

With implementation of the Shorebased IFQ Program, a maximized retention provision was added to the groundfish regulations for vessels in the Pacific whiting IFQ fishery. However, the provision did not address the retention of prohibited species other than Pacific halibut, nor did it establish handling and disposition requirements for prohibited species. For consistency with the salmon FMP and Pacific halibut regulations, provisions for the retention and disposition of prohibited species are added by this final rule. In addition, general definitions at 50 CFR 660.11 are revised to add a definition for protected species, and handling and disposition requirements are established in the regulations.

Minor changes, as detailed in the preamble of the proposed rule, are made throughout the regulations. These minor changes are being made for consistency between the different subparts of groundfish regulations, for clarity, and to remove redundant regulatory text.

Response to Comments

NMFS received one comment letter on the proposed rule (80 FR 52015, August 27, 2015) from a business representing fishermen engaged in the whiting and non-whiting midwater trawl fisheries. The comment is addressed here:

Comment 1: The commenter indicated that the scope of action was too narrow and should be expanded to allow the use of midwater trawl gear to harvest non-whiting species within the Rockfish Conservation Area (RCA) south of 40°10' north latitude. Target species for midwater trawling (widow and yellowtail rockfish) are found in the area south of 40°10' north latitude. The commenter indicated that the current prohibition on non-whiting midwater trawling within or shoreward of the RCA south of 40°10' north latitude is an artifact of old management regulations and is no longer necessary.

Response: Regulatory provisions to allow non-whiting midwater trawl gear south of 40°10' north latitude were implemented in 2005. The intent of the allowance was to provide for a chilipepper rockfish fishery without impacting bocaccio, an overfished species. At its September 2015 meeting, the Council considered updating the gear regulations for the Shorebased IFQ program, including allowing non-whiting midwater trawl gear south of 40°10' north latitude. Further consideration of gear changes is scheduled for the Council's March 2016 meeting. Because this action revises regulations consistent with policy decisions made during the implementation of the trawl catch share program under Amendment 20 to the groundfish FMP,

revisions to update gear provisions are not within the scope considered and are therefore inappropriate for this action and best addressed through future Council action.

Changes from the Proposed Rule

There are no changes to the regulatory text from the proposed rule.

Classification

Pursuant to section 304(b)(1)(A) and 305(d) of the MSA, NMFS has determined that this final rule is consistent with the Groundfish FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) in support of this action. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' response to those comments, relevant analysis contained in the action and its EA, and a summary of the analyses in this rule. A copy of the analyses and the EA are available from NMFS (see **ADDRESSES**). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

The rule modifies midwater trawl restrictions for vessels participating in the Shorebased IFQ Program under the authority of the groundfish FMP and the Magnuson-Stevens Act. The rule would amend the regulations to remove redundancies and inconsistencies relative to the use of midwater trawl gear, and would add provisions to fully implement "maximized retention"

allowances for vessels targeting Pacific whiting. Maximized retention encourages full retention of all catch while recognizing that minor discard events may occur. Only one comment was received on the proposed rule (See Response to Comments section above.) That comment did not raise any issues or concerns related to the IRFA or economic issues more generally. No changes were made to this final rule as a result of the comment.

Two alternatives, each with sub-options, were considered.

Alternative 1 - No Action

- North of 40°10' north latitude midwater trawl gear may be used by vessels with a “Limited entry midwater trawl, Pacific whiting shorebased IFQ” declaration after the start of the primary season. Vessels may use midwater trawl gear to target Pacific whiting and non-whiting if the vessel also fishes in the Pacific whiting fishery.

- There is no requirement to target or land Pacific whiting on a Pacific whiting IFQ trip.
- Vessels with a “Limited entry midwater trawl, Pacific whiting shorebased IFQ” declaration may fish within the RCAs after the start of the primary season.

- Other than Pacific Halibut, prohibited species and protected species retention until landing is prohibited.

- Vessels North of 40°10' north latitude may carry multiple types of midwater gear and both whiting and non-whiting target strategies are allowed on the same trip, however the vessel must have a valid “Limited entry midwater trawl, Pacific whiting shorebased IFQ” declaration.

Alternative 2 (Preferred) - Eliminate redundancies and inconsistencies in regulations regarding the use of midwater trawl gear

- Midwater trawl gear will be allowed for all target species with a valid declaration for either “limited entry midwater trawl, non-whiting shorebased IFQ” or “limited entry midwater

trawl, Pacific whiting shorebased IFQ.” Non-whiting vessels would not be obligated to also target Pacific whiting.

- A Pacific whiting IFQ trip must be 50 percent or more whiting by weight at landing.
- Midwater trawl gear will be allowed within the trawl RCAs and EFH conservation areas for all target species.
- For vessels targeting Pacific whiting on “maximized retention” trips, prohibited and protected species must be retained until landing.
- The disposition of salmon would be specified such that it is consistent with salmon FMP.
- The disposition of Pacific halibut and Dungeness crab would be specified so they are consistent with Pacific halibut regulations and state regulations.
- The disposition of protected species would be consistent with the current biological opinions.
- North of 40°10’ north latitude, vessels will be allowed to carry multiple types of midwater gear, but:

Alternative 2 Sub-option A (preferred): allow only one target strategy (whiting or non-whiting) on a trip.

Alternative 2 Sub-option B: allow both whiting and non-whiting target strategies on the same trip. However, "maximized retention" would not be allowed if the landed catch was greater than 50 percent non-whiting species.

Under No Action, it is unclear whether vessels using midwater trawl north of 40°10’ north latitude must submit a declaration for “limited entry midwater trawl, Pacific whiting shorebased IFQ” even if they intend to target non-whiting species. Alternative 2 results in a low

positive impact over No Action as it removes the prohibition that restricts midwater trawl to the Pacific whiting fishery north of 40°10' north latitude and allows for the use of either midwater trawl declaration. Alternative 2 would improve tracking of activity relative to time/area restrictions and the specific target strategy. Aligning the declaration with the activity could allow for a more surgical management response that can be clearly understood by harvesters.

Under No Action, Pacific whiting trips would not be defined. Alternative 2 defines Pacific whiting trips as trips with landings that are 50 percent or more Pacific whiting by weight. Alternative 2 is not expected to have a measureable effect on the vast majority of midwater trawl trips targeting Pacific whiting. Only a small number of vessels may have reduced flexibility under Alternative 2 sub-option A (one target strategy per trip) because a vessel operator cannot change the target fishing strategy after they leave port. However, sub-option A is most similar to how harvesters currently operate. Either sub-option provides clarity and eliminates inconsistencies, making the regulations less complicated for harvesters and easier to enforce. Revising the groundfish regulations for clarity under Alternative 2 is expected to provide more equitable opportunity for non-whiting vessels north of 40°10' north latitude as it is clear they do not need to also fish for Pacific whiting.

Time/Area restrictions under No Action include Rockfish Conservation Areas (RCAs), Klamath River conservation zone, Columbia River conservation zone, Ocean Salmon Conservation Zones (OSCZs), Bycatch Reduction Areas (BRAs), the Eureka area 100 fm restriction, prohibition on night fishing south of 42°00' north latitude, and the Pacific whiting primary seasons. These restrictions were initially implemented to reduce incidental catch of Chinook salmon in the Pacific whiting fisheries. The Klamath River conservation zone, Columbia River conservation zone, OSCZs, and the prohibition on night fishing are specific to

the targeting of Pacific whiting and would remain linked to the targeting of whiting under both No Action and Alternative 2. The impacts of No Action on the closed areas are neutral as no changes would be made to reduce the confusion by fishermen or enforcement about prohibited or allowed activities. Because widow rockfish were historically targeted at night with low bycatch, Alternative 2 revisions would clearly state that the prohibition on night fishing does not apply to non-whiting targeting. BRAs have evolved since their initial implementation in 2007 when they applied specifically to the targeting of whiting. Since 2013, the BRAs have been considered a tool for use in the Pacific whiting sectors (all midwater trawl). Alternative 2 revisions would clearly state that the BRAs and RCA exemptions apply to all midwater trawl. Providing clarification on how time/area restrictions relate to specific target fishing activity under Alternative 2 is expected to reduce regulatory complexity and eliminate contradictory regulations. Changes under Alternative 2 are expected to be beneficial to the harvesters, managers, and enforcement.

Maximized retention is allowed under No Action. However, supporting regulations would not be added to reduce confusion regarding the landing of maximized retention catch for non-whiting target strategies. Provisions would not be added to allow the retention of prohibited species under No Action. The socio-economic impacts of managing under No Action are neutral, providing that restrictions on the retention of prohibited species continue to be unenforced. Alternative 2 would revise the regulations to clearly state that maximized retention would only be allowed for trips targeting Pacific whiting, consistent with the provisions of Amendment 20. Because of relatively low bycatch by vessels targeting Pacific whiting, maximized retention allows sorting to be delayed until landing. Because whiting flesh deteriorates rapidly once the fish are caught, whiting must be minimally handled and immediately chilled to maintain the flesh

quality. Allowing Pacific whiting shoreside vessels to retain unsorted catch benefits harvesters by enabling whiting quality to be maintained. Under Alternative 2, provisions would be added to allow Pacific whiting vessels to retain otherwise prohibited species until landing. Non-whiting vessels would have to continue to sort prohibited and protected species at sea. Some non-whiting landings under maximized retention have had a greater variety in bycatch than is typically seen in Pacific whiting landings and have been landed at first receivers with only one catch monitor. Long offloads associated with sorting and weighing non-whiting maximized retention catch has resulted in offload time exceeding the catch monitor's allowed work hours in a 24 hour period. Alternative 2 would also provide clarification on the disposition of protected species for maximized retention landings. Revisions to the maximized retention requirements under Alternative 2 are expected to reduce regulatory complexity and eliminate contradictory regulations, benefiting harvesters.

Under No Action, Pacific whiting trips would continue to be undefined and no protocols for handling or disposing of prohibited or protected species would be defined. The impacts of No Action are neutral, as first receivers would use current methods to identify maximized retention deliveries and determine how to handle and dispose of prohibited and protected species. Defining Pacific whiting trips under Alternative 2 should make it easier for first receivers/processors to identify which trips are classified as "maximized retention" such that it would be more clear which groundfish regulations apply. Alternative 2 specifies handling and disposition of prohibited and protected species. Clear protocols for the disposition of prohibited catch should reduce complexity and confusion for first receivers/processors. Currently, provisions that affect the disposition of prohibited or protected species exist in various federal regulations, non-groundfish FMPs, and ESA biological opinions. Clarifying these provisions in the groundfish

regulations will reduce complexity in the requirements for disposition and handling of maximized retention catch and result in a low positive benefit to first receivers/processors. First receivers are currently taking salmon and grinding and processing the fish into fish meal and/or providing edible fish to food pantries, soup kitchens, or other non-profit organizations. In some states, state agencies have assisted in the transfer of fish to food banks, but this assistance is being withdrawn. However, NMFS concludes that these new regulations do not impose any significant burden on first receivers as they are consistent with current first receiver practices and with prior practices established under the 2007-2010 whiting EFPs.

This action will clarify the regulatory requirements for vessels using midwater trawl gear in the Pacific Coast Groundfish Fishery Shorebased Individual Fishery Quota Program. This action is needed to eliminate inconsistencies and confusion in the current regulations. For vessels targeting Pacific whiting, the action would clarify that the retention of prohibited and protected species is allowed until landing. The disposition of prohibited and protected species would be specified consistent with the Pacific Coast Groundfish Fishery Management Plan, the Pacific Coast Salmon Fishery Management Plan, and other applicable law.

The NMFS Guidelines for Economic Analysis of Fishery Management Actions suggest two criteria to consider in determining the significance of regulatory impacts, namely, disproportionality and profitability. As this final rule is intended to clarify the regulations, available information does not indicate that there will be a significant impact in terms of disproportionality and profitability when comparing small versus large businesses. Copies of the Small Entity Compliance Guide prepared for this final rule are available on the West Coast Region's Web site at <http://www.westcoast.fisheries.noaa.gov/>.

This final rule contains a new collection of-information requirement subject to review under the Paperwork Reduction Act (PRA) which was approved by OMB under collection 0648-0619. The public reporting burden for first receivers to retain records showing the disposition of prohibited and protected species is estimated to average 1 minute per response.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Pursuant to Executive Order 13175, this action is consistent with policy decisions that the Council made during the implementation of Amendment 20 to the Pacific Coast Groundfish Fishery Management Plan, which was developed after meaningful consultation and collaboration with tribal officials from the area covered by the groundfish FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. The proposed regulations do not have a direct effect on the tribes. This rule eliminates redundancies and inconsistencies with state law relative to the use of midwater trawl gear and does not have a direct effect on tribes.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: December 7, 2015

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

2. In § 660.11:

- a. Add in alphabetical order a definition for “Protected species”;
- b. Remove the definition of “Trawl fishery”; and
- c. Add in alphabetical order a definition for “Trawl fishery or Limited entry trawl fishery”.

The additions read as follows:

§ 660.11 General definitions.

* * * * *

Protected species means those species, other than prohibited species, that are protected under Federal law, including species listed under the Endangered Species Act, marine mammals protected under the Marine Mammal Protection Act, and bird species protected under the Migratory Bird Treaty Act. Species that are both protected and prohibited are considered prohibited species for purposes of this part.

* * * * *

Trawl fishery or Limited entry trawl fishery means the groundfish limited entry trawl fishery referred to in subparts C and D, which is composed of vessels registered to a limited entry permit with a trawl endorsement and vessels registered to an MS permit. The trawl fishery is comprised of the following sectors: Catcher/Processor, Mothership, and Shorebased IFQ. The

trawl fishery does not include the non-groundfish trawl fisheries, which are all within the open access fishery.

* * * * *

3. In § 660.12, revise paragraphs (a)(1), (10), and (11) to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(a) * * *

(1) Retain any prohibited or protected species caught by means of fishing gear authorized under this subpart, unless otherwise authorized. Except as otherwise authorized, prohibited and protected species must be returned to the sea as soon as practicable with a minimum of injury when caught and brought on board.

* * * * *

(10) Transfer fish to another vessel at sea unless the vessel transferring fish is participating in the MS Coop or C/P Coop Programs.

(11) Fail to remove all fish from the vessel at landing (defined in § 660.11) and prior to beginning a new fishing trip, except for processing vessels participating in the MS Coop or C/P Coop Programs.

* * * * *

4. In § 660.55, revise paragraphs (c)(1)(i)(A) through (C) to read as follows:

§ 660.55 Allocations.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) *Darkblotched rockfish*. Allocate 9 percent or 25 mt, whichever is greater, of the total trawl allocation of darkblotched rockfish to the Pacific whiting fishery (MS sector, C/P sector, and Shorebased IFQ sectors). The distribution of allocation of darkblotched to each of these sectors will be done pro rata relative to the sector's allocation of the commercial harvest guideline for Pacific whiting. After deducting allocations for the Pacific whiting fishery, the remaining trawl allocation is allocated to the Shorebased IFQ sector.

(B) *Pacific Ocean Perch (POP)*. Allocate 17 percent or 30 mt, whichever is greater, of the total trawl allocation of POP to the Pacific whiting fishery (MS sector, C/P sector, and Shorebased IFQ sector). The distribution of POP to each sector will be done pro rata relative to the sector's allocation of the commercial harvest guideline for Pacific whiting. After deducting allocations for the Pacific whiting fishery, the remaining trawl allocation is allocated to Shorebased IFQ sector.

(C) *Widow rockfish*. Allocate 52 percent of the total trawl allocation of widow rockfish to the Pacific whiting fishery if the stock is under rebuilding, or 10 percent of the total trawl allocation or 500 mt of the trawl allocation, whichever is greater, if the stock is rebuilt. The distribution of the trawl allocation of widow to each sector will be done pro rata relative to the sector's allocation of the commercial harvest guideline for Pacific whiting. After deducting allocations for the Pacific whiting sectors, the remaining trawl allocation is allocated to Shorebased IFQ sector.

* * * * *

5. In § 660.60, revise paragraphs (c)(3)(i) and (d) and remove and reserve paragraph (e).

The revisions read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(c) * * *

(3) * * *

(i) *Depth-based management measures.* Depth-based management measures, particularly closed areas known as Groundfish Conservation Areas, may be implemented in any fishery sector that takes groundfish directly or incidentally. Depth-based management measures are set using specific boundary lines that approximate depth contours with latitude/longitude waypoints found at §§ 660.70 through 660.74. Depth-based management measures and closed areas may be used for the following conservation objectives: to protect and rebuild overfished stocks; to prevent the overfishing of any groundfish species by minimizing the direct or incidental catch of that species; or to minimize the incidental harvest of any protected or prohibited species taken in the groundfish fishery. Depth-based management measures and closed areas may be used for the following economic objectives: to extend the fishing season; for the commercial fisheries, to minimize disruption of traditional fishing and marketing patterns; for the recreational fisheries, to spread the available catch over a large number of anglers; to discourage target fishing while allowing small incidental catches to be landed; and to allow small fisheries to operate outside the normal season. BRAs may be implemented as an automatic action in the Pacific whiting fishery consistent with paragraph (d)(1) of this section. BRAs may be implemented as a routine action for vessels using midwater groundfish trawl gear consistent with the purposes for implementing depth-based management and the setting of closed areas as described in this paragraph.

* * * * *

(d) *Automatic actions.* Automatic management actions may be initiated by the NMFS Regional Administrator or designee without prior public notice, opportunity to comment, or a Council meeting. These actions are nondiscretionary, and the impacts must have been taken into account prior to the action. Unless otherwise stated, a single notice will be published in the **Federal Register** making the action effective if good cause exists under the APA to waive notice and comment.

(1) Automatic actions are used to:

(i) Close the MS or C/P sector when that sector's Pacific whiting allocation is reached, or is projected to be reached. The MS sector non-coop fishery may be closed by automatic action when the Pacific whiting or non-whiting allocation to the non-coop fishery has been reached or is projected to be reached.

(ii) Close one or both MS and C/P sectors when a non-whiting groundfish species with allocations is reached or projected to be reached.

(iii) Reapportion unused allocations of non-whiting groundfish species between the MS and C/P sectors.

(iv) Reapportion the unused portion of the tribal allocation of Pacific whiting to the MS sector, C/P sector, and Shorebased IFQ sector.

(v) Implement the Ocean Salmon Conservation Zone, described at § 660.131, when NMFS projects the Pacific whiting fishery and the tribal whiting fishery combined will take in excess of 11,000 Chinook within a calendar year.

(vi) Implement BRAs, described at § 660.131, when NMFS projects a sector-specific allocation will be reached before the sector's whiting allocation.

(2) Automatic actions are effective when actual notice is sent by NMFS identifying the effective time and date. Actual notice to fishers and processors will be by email, Internet www.westcoast.fisheries.noaa.gov/publications/fishery_management/groundfish/public_notices/recent_public_notices.html), phone, letter, or press release. Allocation reapportionments will be followed by publication in the FEDERAL REGISTER, in which public comment will be sought for a reasonable period of time thereafter.

* * * * *

6. In § 660.100, revise the first sentence to read as follows:

§ 660.100 Purpose and scope.

This subpart applies to the Pacific coast groundfish limited entry trawl fishery. * * *

7. In § 660.111:

- a. Remove the definition for “Catcher/Processor Coop Program or C/P Coop Program”;
- b. Add definition for “Catcher/Processor Coop Program or C/P Coop sector”;
- b. Add in alphabetical order a definition for “Maximized retention”;
- c. Revise the definition for “Mothership Coop Program or MS Coop Program”;
- d. Add a definition for “Mothership Coop Program or MS Coop sector”;
- d. Add in alphabetical order a definition for “Pacific whiting fishery”; and
- e. Revise the definitions for “Pacific whiting IFQ fishery,” “Pacific whiting IFQ trip,” and “Shorebased IFQ Program”.

The revisions and additions read as follows:

§ 660.111 Trawl fishery—definitions.

* * * * *

Catcher/Processor (C/P) Coop Program or C/P sector, refers to the fishery described at § 660.160, subpart D. The C/P Coop Program is composed of vessels registered to a limited entry permit with a C/P endorsement and a valid declaration for limited entry, midwater trawl, Pacific whiting catcher/processor sector.

* * * * *

Maximized retention means a vessel retains all catch from a trip until landing, subject to the specifications of this subpart.

* * * * *

Mothership (MS) Coop Program or MS sector refers to the fishery described at § 660.150, subpart D, and includes both the coop and non-coop fisheries. The MS Coop Program is composed of motherships with MS permits and catcher vessels registered to a limited entry permit with an MS/CV endorsement and a valid declaration for limited entry, midwater trawl, Pacific whiting mothership sector. The MS Coop Program also includes vessels registered to a limited entry permit without an MS/CV endorsement if the vessel is authorized to harvest the MS sector's allocation and has a valid declaration for limited entry, midwater trawl, Pacific whiting mothership sector.

* * * * *

Pacific whiting fishery refers to the Pacific whiting primary season fisheries described at § 660.131. The Pacific whiting fishery is composed of vessels participating in the C/P Coop Program, the MS Coop Program, or the Pacific whiting IFQ fishery.

Pacific whiting IFQ fishery is composed of vessels on Pacific whiting IFQ trips.

Pacific whiting IFQ trip means a trip in which a vessel uses midwater groundfish trawl gear during the dates of the Pacific whiting primary season to target Pacific whiting, and Pacific

whiting constitutes 50 percent or more of the catch by weight at landing as reported on the state landing receipt. Vessels on Pacific whiting IFQ trips must have a valid declaration for limited entry midwater trawl, Pacific whiting shorebased IFQ.

* * * * *

Shorebased IFQ Program or Shorebased IFQ sector, refers to the fishery described at § 660.140, subpart D, and includes all vessels on IFQ trips.

* * * * *

8. In § 660.112, revise paragraphs (a)(2), (b)(1)(viii) through (x), and (b)(2)(ii) to read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(a) * * *

(2) *Sorting, retention, and disposition.* (i) Fail to sort, retain, discard, or dispose of catch consistent with the requirements specified at §§ 660.130(d), 660.140 (b)(2)(iii) and (viii), 660.140(g), and 660.140(j)(2).

(ii) Fail to sort, retain, discard, or dispose of prohibited and protected species from maximized retention landings consistent with the requirements specified at § 660.140(g)(3).

(iii) Retain for personal use or allow to reach commercial markets any part of any prohibited or protected species.

* * * * *

(b) * * *

(1) * * *

(viii) Fish on a Pacific whiting IFQ trip with a gear other than midwater groundfish trawl gear.

(ix) Fish on a Pacific whiting IFQ trip without a valid declaration for limited entry midwater trawl, Pacific whiting shorebased IFQ.

(x) Use midwater groundfish trawl gear Pacific whiting IFQ fishery primary season dates as specified at § 660.131(b).

* * * * *

(2) * * *

(ii) Fail to sort or dispose of catch received from an IFQ trip in accordance with the requirements of §§ 660.130(d) and 660.140(g)(3).

* * * * *

9. In § 660.130:

a. Revise paragraphs (a), (c)(3), and (c)(4)(i)(A) through (E);

b. Remove paragraph (c)(4)(i)(F);

c. Revise paragraphs (d)(2)(i), (d)(3), (e) introductory text, and (e)(4)(i) and (ii); and

d. Add paragraphs (e)(6) and (7).

The revisions and additions read as follows:

§ 660.130 Trawl fishery—management measures.

(a) *General.* This section applies to the limited entry trawl fishery. Most species taken in the limited entry trawl fishery will be managed with quotas (see § 660.140), allocations or set-asides (see § 660.150 or § 660.160), or cumulative trip limits (see trip limits in Tables 1 (North) and 1 (South) of this subpart), size limits (see § 660.60 (h)(5), subpart C), seasons (see Pacific whiting at § 660.131(b), subpart D), gear restrictions (see paragraph (b) of this section) and

closed areas (see paragraph (e) of this section and §§ 660.70 through 660.79, subpart C). The limited entry trawl fishery has gear requirements and harvest limits that differ by the type of groundfish trawl gear on board and the area fished. Groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph (e)(1) of this section and § 660.70, subpart C). The trip limits in Tables 1 (North) and 1 (South) of this subpart applies to vessels participating in the limited entry trawl fishery and may not be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally-managed groundfish.

* * * * *

(c) * * *

(3) *Fishing with midwater groundfish trawl gear.* (i) North of 40°10' N. lat., midwater groundfish trawl gear is required for Pacific whiting fishery vessels; midwater groundfish trawl gear is allowed for vessels targeting non-whiting species during the Pacific whiting primary season for the Pacific whiting IFQ fishery. Also see restrictions on the use of midwater groundfish trawl gear within the RCAs north of 40° 10' N. lat. at § 660.130(e)(4)(i).

(ii) South of 40°10' N. lat., midwater groundfish trawl gear is prohibited shoreward of the RCA boundaries and permitted seaward of the RCA boundaries.

(4) * * *

(i) * * *

(A) A vessel may not have both groundfish trawl gear and non-groundfish trawl gear onboard simultaneously. A vessel may not have both bottom groundfish trawl gear and midwater groundfish trawl gear onboard simultaneously. A vessel may have more than one type of limited entry bottom trawl gear on board, either simultaneously or successively, during a cumulative

limit period. A vessel may have more than one type of midwater groundfish trawl gear on board, either simultaneously or successively, during a cumulative limit period.

(B) If a vessel fishes exclusively with large or small footrope trawl gear during an entire cumulative limit period, the vessel is subject to the small or large footrope trawl gear cumulative limits and that vessel must fish seaward of the RCA boundaries during that limit period.

(C) If a vessel fishes exclusively with selective flatfish trawl gear during an entire cumulative limit period, then the vessel is subject to the selective flatfish trawl gear-cumulative limits during that limit period, regardless of whether the vessel is fishing shoreward or seaward of the RCA boundaries.

(D) If more than one type of bottom groundfish trawl gear (selective flatfish, large footrope, or small footrope) is on board, either simultaneously or successively, at any time during a cumulative limit period, then the most restrictive cumulative limit associated with the bottom groundfish trawl gear on board during that cumulative limit period applies for the entire cumulative limit period, regardless of whether the vessel is fishing shoreward or seaward of the RCA.

(E) If a vessel fishes both north and south of 40°10' N. lat. with any type of small footrope gear onboard the vessel at any time during the cumulative limit period, the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear (See crossover provisions at § 660.120.)

* * * * *

(d) * * *

(2) * * *

(i) *First receivers.* Fish landed at IFQ first receivers (including shoreside processing facilities and buying stations that intend to transport catch for processing elsewhere) must be sorted, prior to first weighing after offloading from the vessel and prior to transport away from the point of landing, with the following exception: catch from a Pacific whiting IFQ trip may be sorted after weighing as specified at § 660.140(j)(2).

* * * * *

(3) *Sorting requirements for the MS Coop and the C/P Coop Programs.* (i) Processing vessels in the MS and C/P Coop Programs may use a bulk weighing scale in compliance with the equipment requirement at § 660.15(b) to derive an accurate total catch weight prior to sorting. Immediately following weighing of the total catch, the catch must be sorted to the species groups specified in paragraph (d)(1) of this section and all catch of-groundfish and non-groundfish species must be accurately accounted for and the weight of all catch other than a single predominant species deducted from the total catch weight to derive the weight of a single predominant species.

(ii) If sorting occurs on a catcher vessel in the MS Coop Program, the catch must not be discarded from the vessel and the vessel must not mix catch from hauls until the observer has sampled the catch.

(e) *Groundfish conservation areas (GCAs) applicable to trawl vessels.* A GCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude. The latitude and longitude coordinates of the GCA boundaries are specified at §§ 660.70 through 660.74. A vessel that is fishing within a GCA listed in this paragraph (e) with trawl gear authorized for use within a GCA may not have any other type of trawl gear on board the vessel. The following GCAs apply to vessels participating in the limited entry trawl fishery.

Additional closed areas that specifically apply to vessels using midwater groundfish trawl gear are described at § 660.131(c).

* * * * *

(4) * * *

(i) Operating a vessel with groundfish trawl gear onboard within a trawl RCA is prohibited, except for the purpose of continuous transit, or under the following conditions when the vessel has a valid declaration for the allowed fishing:

(A) Midwater groundfish trawl gear may be used within the RCAs north of 40°10' N. lat. by vessels targeting Pacific whiting or non-whiting during the applicable Pacific whiting primary season.

(B) Vessels fishing with demersal seine gear between 38° N. lat. and 36° N. lat. shoreward of a boundary line approximating the 100 fm (183 m) depth contour as defined at § 660.73, subpart C, may have groundfish trawl gear onboard.

(ii) Trawl vessels may transit through an applicable GCA, with or without groundfish on board, provided all groundfish trawl gear is stowed either: below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors. These restrictions do not apply to vessels allowed to fish within the trawl RCA under paragraph (e)(4)(i) of this section.

* * * * *

(6) *Bycatch reduction areas (BRAs)*. Vessels using midwater groundfish trawl gear during the applicable Pacific whiting primary season may be prohibited from fishing shoreward

of a boundary line approximating the 75 fm (137 m), 100 fm (183 m) or 150 fm (274 m) depth contours.

(7) *Eureka management area midwater trawl trip limits.* No more than 10,000-lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished with midwater groundfish trawl gear in the fishery management area shoreward of the 100 fm (183 m) depth contour in the Eureka management area.

10. In § 660.131, revise paragraphs (a), (b)(1), (b)(2) introductory text, (b)(2)(i) and (ii), (b)(2)(iii) introductory text, (b)(3) introductory text, (b)(3)(ii), (c) introductory text, (c)(4), (d), and (h)(2) to read as follows:

§ 660.131 Pacific whiting fishery management measures.

(a) *General.* This section applies to the MS sector, the C/P sector, the Pacific whiting IFQ fishery, and Shorebased IFQ vessels targeting Pacific whiting under trip limits outside the Pacific whiting primary season.

(b) *Pacific whiting primary seasons and Pacific whiting trip limits—*(1) *Pacific whiting fishery primary seasons.* (i) For the Pacific whiting IFQ fishery, the primary season is the period(s) of the large-scale Pacific whiting target fishery conducted after the primary season start date.

(ii) For the C/P sector, the primary season is the period(s) when catching and at-sea processing are allowed (after the season closes, at-sea processing of any fish already on board the processing vessel is allowed to continue).

(iii) For vessels delivering to motherships, the primary season is the period(s) when catching and at-sea processing is allowed for the MS sector (after the season closes, at-sea processing of any fish already on board the processing vessel is allowed to continue).

(2) *Different primary season start dates.* North of 40°30' N. lat., different primary season starting dates may be established for the C/P Coop Program, the MS Coop Program, and in the Pacific whiting IFQ fishery for vessels delivering to IFQ first receivers north of 42° N. lat. and vessels delivering to IFQ first receivers between 42° and 40°30' N. lat.

(i) *Procedures.* The Pacific whiting primary seasons north of 40°30' N. lat. generally will be established according to the procedures of the PCGFMP for developing and implementing harvest specifications and apportionments. The season opening dates remain in effect unless changed.

(ii) *Criteria.* The start of a Pacific whiting primary season may be changed based on a recommendation from the Council and consideration of the following factors, if applicable: size of the harvest guidelines for whiting and bycatch species; age/size structure of the whiting population; expected harvest of bycatch and prohibited species; availability and stock status of prohibited species; expected participation by catchers and processors; the period between when catcher vessels make annual processor obligations and the start of the fishery; environmental conditions; timing of alternate or competing fisheries; industry agreement; fishing or processing rates; and other relevant information.

(iii) *Primary whiting season start dates and duration.* After the start of a primary season for a sector of the Pacific whiting fishery, the primary season remains open for that sector until the sector allocation of whiting or non-whiting groundfish (with allocations) is reached or projected to be reached and the primary season for that sector is closed by NMFS. The starting dates for the primary seasons are as follows:

* * * * *

(3) *Pacific whiting trip limits.* For Shorebased IFQ Program vessels targeting Pacific whiting outside the primary season, the “per trip” limit for whiting is announced in Table 1 of

this subpart. The per-trip limit is a routine management measure under § 660.60(c). This trip limit includes any whiting caught shoreward of 100 fm (183 m) in the Eureka management-area. The per-trip limit for other groundfish species are announced in Table 1 (North) and Table 1 (South) of this subpart and apply as follows:

* * * * *

(ii) If a vessel on a Pacific whiting IFQ trip harvests a groundfish species other than whiting for which there is a midwater trip limit, then that vessel may also harvest up to another footrope-specific limit for that species during any cumulative limit period that overlaps the start or close of the primary season.

(c) *Closed areas.* Vessels fishing during the Pacific whiting primary seasons shall not target Pacific whiting with midwater groundfish trawl gear in the following portions of the fishery management area:

* * * * *

(4) *Bycatch reduction areas (BRAs).* Bycatch reduction area closures specified at § 660.130(e) may be implemented inseason through automatic action when NMFS projects that a Pacific whiting sector will exceed an allocation for a non-whiting groundfish species specified for that sector before the sector's whiting allocation is projected to be reached.

(d) *Eureka management area trip limits.* Trip landing or frequency limits may be established, modified, or removed under § 660.60 or this paragraph, specifying the amount of Pacific whiting that may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100 fathom (183 m) contour in the Eureka management area. Unless otherwise specified, no more than 10,000-lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any

time during a fishing trip, fished in the fishery management area shoreward of the 100 fm (183 m) contour in the Eureka management area.

* * * * *

(h) * * *

(2) The reapportionment of surplus whiting will be made by actual notice under the automatic action authority provided at § 660.60(d)(1).

* * * * *

11. In § 660.140, revise paragraph (a) introductory text, (b)(2)(i) through (iii), (g), and (j)(2)(viii) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(a) *General.* The regulations in this section apply to the Shorebased IFQ Program. The Shorebased IFQ Program includes a system of transferable QS for most groundfish species or species groups, IBQ for Pacific halibut, and trip limits or set-asides for the remaining groundfish species or species groups. NMFS will issue a QS permit to eligible participants and will establish a QS account for each QS permit owner to track the amount of QS or IBQ and QP or IBQ pounds owned by that owner. QS permit owners may own QS or IBQ for IFQ species, expressed as a percent of the allocation to the Shorebased IFQ Program for that species. NMFS will issue QP or IBQ pounds to QS permit owners, expressed in pounds, on an annual basis, to be deposited in the corresponding QS account. NMFS will establish a vessel account for each eligible vessel owner participating in the Shorebased IFQ Program, which is independent of the QS permit and QS account. In order to use QP or IBQ pounds, a QS permit owner must transfer the QP or IBQ pounds from the QS account into the vessel account for the vessel to which the

QP or IBQ pounds is to be assigned. Harvests of IFQ species may only be delivered to an IFQ first receiver with a first receiver site license. In addition to the requirements of this section, the Shorebased IFQ Program is subject to the following groundfish regulations of subparts C and D:

* * * * *

(b) * * *

(2) * * *

(i) Ensure that all catch removed from a vessel making an IFQ delivery is weighed on a scale or scales meeting the requirements described in § 660.15(c).

(ii) Ensure that all catch is landed, sorted, and weighed in accordance with a valid catch monitoring plan as described in § 660.140(f)(3)(iii).

(iii) Ensure that all catch is sorted, prior to first weighing, as specified at § 660.130(d) and consistent with § 660.140(j)(2)(viii).

* * * * *

(g) *Retention and disposition requirements*—(1) *General*. Shorebased IFQ Program vessels may discard IFQ species/species groups, provided such discards are accounted for and deducted from QP in the vessel account. With the exception of vessels on Pacific whiting IFQ trips engaged in maximized retention, prohibited and protected species must be discarded at sea; Pacific halibut must be discarded as soon as practicable and the discard mortality must be accounted for and deducted from IBQ pounds in the vessel account. Non-IFQ species and non-groundfish species may be discarded at sea. The sorting of catch, the weighing and discarding of any IBQ and IFQ species, and the retention of IFQ species must be monitored by the observer.

(2) *Maximized retention for Pacific whiting IFQ trips*. Vessels on Pacific whiting IFQ trips may engage in maximized retention. Maximized retention allows for the discard minor

operational amounts of catch at sea if the observer has accounted for the discard. Vessels engaged in maximized retention must retain prohibited species until landing. Protected species may be retained until landing except as provided under paragraph (g)(3) of this section. Pacific halibut must be accounted for and deducted from IBQ pounds in the vessel account.

(3) *Disposition of prohibited species and protected species in maximized retention landings*—(i) *Prohibited species handling and disposition*. To ensure compliance with fishery regulations at 50 CFR part 300, subparts E and F, and part 600, subpart H; with the Pacific Salmon Fishery Management Plan; and with the Pacific Halibut Catch Share Plan; the handling and disposition of all prohibited species in maximized retention landings are the responsibility of the first receiver and must be consistent with the following requirements:

(A) Any prohibited species landed at first receivers must not be transferred, processed, or mixed with another landing until the catch monitor has: recorded the number and weight of salmon by species; inspected all prohibited species for tags or marks; and, collected biological data, specimens, and genetic samples.

(B) No part of any prohibited species may be retained for personal use by a vessel owner or crew member, or by a first receiver or processing crew member. No part of any prohibited species may be allowed to reach commercial markets.

(C) Prohibited species suitable for human consumption at landing must be handled and stored to preserve the quality. Priority in disposition must be given to the donation to surplus food collection and distribution system operated and established to assist in bringing donated food to nonprofit charitable organizations and individuals for the purpose of reducing hunger and meeting nutritional needs.

(D) The first receiver must report all prohibited species landings on the electronic fish ticket and is responsible for maintaining records verifying the disposition of prohibited species. Records on catch disposition may include, but are not limited to: receipts from charitable organizations that include the organization's name and amount of catch donated; cargo manifests setting forth the origin, weight, and destination of all prohibited species; or disposal receipts identifying the recipient organization and amount disposed. Any such records must be maintained for a period not less than three years after the date of disposal and such records must be provided to OLE upon request.

(ii) *Protected Species handling and disposition.* All protected species must be abandoned to NMFS or the US Fish and Wildlife Service or disposed of consistent with paragraphs (g)(3)(ii)(A) and (B) of this section. No part of any protected species may be retained for personal use by a vessel owner or crew member, or by a first receiver or processing crew member. No part of any protected species may be allowed to reach commercial markets.

(A) *Eulachon and green sturgeon.* Must be sorted and reported by species on electronic fish tickets and state landing receipts and may not be reported in unspecified categories. Whole body specimens of green sturgeon must be retained, frozen, stored separately by delivery, and labeled with the vessel name, electronic fish ticket number, and date of landing. Arrangements for transferring the specimens must be made by contacting NMFS Southwest Fisheries Science Center at 831-420-3903 within 72 hours after the completion of the offload.

(B) *Seabirds, marine mammals, and sea turtles.* Albatross must reported to the US Fish and Wildlife Service 541-867-4558 extension 237 or 503-231-6179) as soon as possible and directions for surrendering must be followed. Marine mammals and sea turtles must be reported to NMFS as soon as possible (206- 526-6550) and directions for surrendering or disposal must

be followed. Whole body specimens must be labeled with the vessel name, electronic fish ticket number, and date of landing. Whole body specimens must be kept frozen or on ice until arrangements for surrendering or disposing are completed. Unless directed otherwise, after reporting is completed, seabirds, marine mammals, and sea turtles may be disposed by incinerating, rendering, composting, or returning the carcasses to sea.

* * * * *

(j) * * *

(2) * * *

(viii) *Pacific whiting IFQ trips*. Immediately following weighing of the total catch and prior to processing or transport away from the point of landing, the catch must be sorted to the species groups specified at § 660.130(d) and all catch other than the target species (groundfish and non groundfish species) must be accurately weighed and the weight of non-target species deducted from the total catch weight to derive the weight of a single predominant species. Catch from a Pacific whiting IFQ trip may be sorted after weighing and the weight of a single predominant species determined by deducting the weight of all other species from the total weight of the landing, provided that:

(A) The unsorted catch is weighed on a bulk weighing scale in compliance with equipment requirements at § 660.15(c);

(B) All catch (groundfish and non-groundfish species) in the landing other than the single predominant species is reweighed on a scale in compliance with equipment requirements at § 660.15(c) and the reweighed catch is deducted from the total weight of the landing;

(C) The catch is sorted to the species groups specified at § 660.130(d) prior to processing or transport away from the point of landing; and

(D) Prohibited species are sorted by species, counted, and weighed.

* * * * *

12. In § 660.405, revise paragraph (a) introductory text to read as follows:

§ 660.405 Prohibitions.

(a) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following, except as otherwise authorized under this part:

* * * * *

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